

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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Attorneys for Plaintiffs

DR. FADI CHAABAN, DR. SABINO R.
TORRE, DR. CONSTANTINOS A.
COSTEAS, AND DR. ANTHONY J.
CASELLA as Trustees of Diagnostic &
Clinical Cardiology, P.A. Profit Sharing
Plan,

Plaintiffs,

v.

DR. MARIO A. CRISCITO,

Defendant.

Civil Action No. 2:08-cv-01567 (GEB/MCA)

**DECLARATION OF MELISSA E. FLAX
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

MELISSA E. FLAX, of full age and upon her oath, declares as follows:

1. I am an attorney at law in the State of New Jersey, and a partner of the law firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello attorneys for plaintiffs, Dr. Fadi Chaaban, Dr. Sabion R. Torre, Dr. Constantinos A. Costeas and Dr. Anthony J. Casella, as Trustees of Diagnostic & Clinical Cardiology, P.A. Profit Sharing Plan.

2. I submit this Declaration in support of Plaintiff's Motion for Summary Judgment.

3. Attached hereto as Exhibit 1 is a true and accurate copy of the Complaint that was filed on March 28, 2008.

4. Attached hereto as Exhibit 2 is a true and accurate copy of the 2003 Form 990 for The St. Barnabas Physician Partnership Health Plan Trust.

5. Attached hereto as Exhibit 3 is a true and accurate copy of the 2004 Form 990 for The St. Barnabas Physician Partnership Health Plan Trust.

6. Attached hereto as Exhibit 4 is a true and accurate copy of the 2005 Form 990 for The St. Barnabas Physician Partnership Health Plan Trust.

7. Attached hereto as Exhibit 5 is a true and accurate copy of the 2006 Form 990 for The St. Barnabas Physician Partnership Health Plan Trust.

8. Attached hereto as Exhibit 6 is a true and accurate copy of the 2007 Form 990 for The St. Barnabas Physician Partnership Health Plan Trust.

9. Attached hereto as Exhibit 7 is a true and accurate copy of the 2002 Form 990 for St. Barnabas Corporation.

10. Attached hereto as Exhibit 8 is a true and accurate copy of the 2003 Form 990 for St. Barnabas Corporation.

11. Attached hereto as Exhibit 9 is a true and accurate copy of the 2004 Form 990 for St. Barnabas Corporation.

12. Attached hereto as Exhibit 10 is a true and accurate copy of the 2005 Form 990 for St. Barnabas Corporation.

13. Attached hereto as Exhibit 11 is a true and accurate copy of the 2006 Form 990 for St. Barnabas Corporation.

14. Attached hereto as Exhibit 12 is a true and accurate copy of the 2007 Form 990 for St. Barnabas Corporation.

15. Attached hereto as Exhibit 13 is a true and accurate copy of the 2008 Form 990 for St. Barnabas Corporation.

16. Attached hereto as Exhibit 14 is a true and accurate copy of the 2002 Form 990 for Clara Maass Medical Center.

17. Attached hereto as Exhibit 15 is a true and accurate copy of the 2003 Form 990 for Clara Maass Medical Center.

18. Attached hereto as Exhibit 16 is a true and accurate copy of the 2004 Form 990 for Clara Maass Medical Center.

19. Attached hereto as Exhibit 17 is a true and accurate copy of the 2005 Form 990 for Clara Maass Medical Center.

20. Attached hereto as Exhibit 18 is a true and accurate copy of the 2006 Form 990 for Clara Maass Medical Center.

21. Attached hereto as Exhibit 19 is a true and accurate copy of the 2007 Form 990 for Clara Maass Medical Center.

22. Attached hereto as Exhibit 20 is a true and accurate copy of the 2008 Form 990 for Clara Maass Medical Center.

23. Attached hereto as Exhibit 21 is a true and accurate copy of the 2002 Form 990 for Clara Maass Health System Inc.

24. Attached hereto as Exhibit 22 is a true and accurate copy of the 2003 Form 990 for Clara Maass Health System Inc.

25. Attached hereto as Exhibit 23 is a true and accurate copy of the 2004 Form 990 for Clara Maass Health System Inc.

26. Attached hereto as Exhibit 24 is a true and accurate copy of the 2005 Form 990 for Clara Maass Health System Inc.

27. Attached hereto as Exhibit 25 is a true and accurate copy of the 2006 Form 990 for Clara Maass Health System Inc.

28. Attached hereto as Exhibit 26 is a true and accurate copy of the 2007 Form 990 for Clara Maass Health System Inc.

29. Attached hereto as Exhibit 27 is a true and accurate copy of the 2008 Form 990 for Clara Maass Health System Inc.

30. Attached hereto as Exhibit 28 are true and accurate copies of the St. Barnabas Health Care System Promotional Flyers for the years 2008, 2009 and 2010.

31. Attached hereto as Exhibit 29 are true and accurate copies of the Clara Maass Medical Center Promotional Flyers for the years 2008 and 2009.

32. Attached hereto as Exhibit 30 is a true and accurate copy of the 2006 Year-End Report for QualCare, Inc.

33. Attached hereto as Exhibit 31 is a true and accurate copy of the M.D. News, Vol. 3, No. 3, March 2006 Cover Story.

34. Attached hereto as Exhibit 32 is a true and accurate copy of relevant portions of the deposition transcript of Mario A. Criscito dated December 4, 2009.

35. Attached hereto as Exhibit 33 is a true and accurate copy of the Trust Document Creating Diagnostic & Clinical Cardiology, P.A. ("DCC") Money-Purchase Plan dated April 1, 1976.

36. Attached hereto as Exhibit 34 are true and accurate copies of the Amendments to DCC Money Purchase Plan Trust.

37. Attached hereto as Exhibit 35 is a true and accurate copy of the DCC Money Purchase Pension Plan Adoption Agreement dated April 4, 1986.

38. Attached hereto as Exhibit 36 is a true and accurate copy of the Regional Prototype Money Purchase Plan Agreement #02-003 dated December 29, 1994.

39. Attached hereto as Exhibit 37 is a true and accurate copy of the Amendment to DCC Money Purchase Plan effective January 1, 1995.

40. Attached hereto as Exhibit 38 is a true and accurate copy of the Adoption Agreement for Prototype Money Purchase Plan effective January 1, 2003.

41. Attached hereto as Exhibit 39 is a true and accurate copy of relevant portions of the deposition transcript of Brian Warnock dated June 16, 2009.

42. Attached hereto as Exhibit 40 is a true and accurate copy of the DCC Profit Sharing Plan and Trust Document.

43. Attached hereto as Exhibit 41 is a true and accurate copy of relevant portions of the deposition transcript of Brian Warnock dated July 15, 2009.

44. Attached hereto as Exhibit 42 are true and accurate copies of the DCC Money Purchase Plan Annual Report for the Plan Year Ending December 31, 1999.

45. Attached hereto as Exhibit 43 are true and accurate copies of a series of handwritten notes from APC files confirming all information regarding the commingled account must go to Criscito and no one else.

46. Attached hereto as Exhibit 44 is a true and accurate copy of the December 6, 2007 letter from Brian Warnock to Joy M. Mercer, Esq. regarding discrepancies in Criscito's reporting of asset values for the commingled account.

47. Attached hereto as Exhibit 45 is a true and accurate copy of relevant portions of the deposition transcript of Mark Brown dated June 17, 2009.

48. Attached hereto as Exhibit 46 is a true and accurate copy of Criscito's handwritten and typed submissions to APC regarding year-end asset values for the commingled account.

49. Attached hereto as Exhibit 47 is a true and accurate copy of Criscito's handwritten 1999 Year-End submission to APC for the commingled account faxed to APC on January 13, 2000.

50. Attached hereto as Exhibit 48 is a true and accurate copy of the September 14, 2007 Memo from Brian Warnock with attachments.

51. Attached hereto as Exhibit 49 is a true and accurate copy of the Criscito 2000 Year-End submission to APC for the commingled account with the December 31, 2000 Morgan Stanley account statement, March 31, 2000 Morgan Stanley account statement and December 31, 2000 Smith Barney account statement attached.

52. Attached hereto as Exhibit 50 is a true and accurate copy of the November 23, 1999 letter from Dominique Eck (APC) to Criscito with a form letter regarding establishing segregated accounts for participants in the commingled account.

53. Attached hereto as Exhibit 51 is a true and accurate copy of the August 28, 2007 letter from Brian Warnock to Anthony Casella regarding Mary Ann Canales.

54. Attached hereto as Exhibit 52 is a true and accurate copy of the Expert Report of Scott M. Feit dated May 28, 2009.

55. Attached hereto as Exhibit 53 is a true and accurate copy of relevant portions of the deposition transcript of Scott M. Feit dated July 21, 2010.

56. Attached hereto as Exhibit 54 is a true and accurate copy of relevant portions of Scott M. Feit's documents that were marked as Feit 1 at his deposition.

57. Attached hereto as Exhibit 55 is a true and accurate copy of various Morgan Stanley account statements for the period June 30, 1999 through November 30, 2006.

58. Attached hereto as Exhibit 56 is a true and accurate copy of Criscito's requests to Morgan Stanley for withdrawals/transfers from the Morgan Stanley account and related documents.

59. Attached hereto as Exhibit 57 is a true and accurate copy of relevant portions of the deposition transcript of Mario A. Criscito dated December 11, 2009.

60. Attached hereto as Exhibit 58 is a true and accurate copy of the Forbes Internet Profile for Evelyn Langlieb Greer.

61. Attached hereto as Exhibit 59 is a true and accurate copy of the Internet information page for Surf Club resort, Miami, Florida.

62. Attached hereto as Exhibit 60 is a true and accurate copy of portions of the Sovereign Bank Subpoenaed Documents.

63. Attached hereto as Exhibit 61 is a true and accurate copy of the January 14, 2002 Letter from Mario Criscito to Morgan Stanley requesting a check for \$6,000,000.

64. Attached hereto as Exhibit 62 is a true and accurate copy of the February 27, 2003 Independence Community (Sovereign Bank) Deposit Slip for \$1,850,000 into Sovereign Bank Pension Fund account.

65. Attached hereto as Exhibit 63 is a true and accurate copy of the Satellite Aerial Photograph of 32 Chelsea Drive, Livingston, New Jersey.

66. Attached hereto as Exhibit 64 is a true and accurate copy of the Deed and Bill of Sale for Criscito's purchase of 32 Chelsea Drive, Livingston, New Jersey.

67. Attached hereto as Exhibit 65 is a true and accurate copy of portions of the Sovereign Bank Subpoenaed Documents.

68. Attached hereto as Exhibit 66 is a true and accurate copy of the 2006 Form 5498 reflecting rollover contribution from Sovereign Bank Pension Fund account to Mario Criscito in the amount of \$3,000,000.

69. Attached hereto as Exhibit 67 is a true and accurate copy of the Independence/Sovereign Bank Savings Withdrawal Slip dated August 2006 reflecting withdrawal from the Sovereign Bank Pension Fund account in the amount of \$3,388,916.11.

70. Attached hereto as Exhibit 68 is a true and accurate copy of the 2005 Forms 1096 and 1099-R reflecting distribution from DCC Profit Sharing Plan to Mario Criscito in the amount of \$4,510,543.84.

71. Attached hereto as Exhibit 69 is a true and accurate copy of the November 13, 2007 letter from Brian Warnock to Joy M. Mercer, Esq. confirming only distribution to Criscito known to APC was \$4,510,543.84 in 2005.

72. Attached hereto as Exhibit 70 is a true and accurate copy of the 1999 Form 5500 for the DCC Money Purchase Plan.

73. Attached hereto as Exhibit 71 is a true and accurate copy of the 2000 Form 5500 for the DCC Money Purchase Plan.

74. Attached hereto as Exhibit 72 is a true and accurate copy of the 2001 Form 5500 for the DCC Money Purchase Plan.

75. Attached hereto as Exhibit 73 is a true and accurate copy of the 2002 Form 5500 for the DCC Money Purchase Plan.

76. Attached hereto as Exhibit 74 is a true and accurate copy of the 2003 Form 5500 for the DCC Money Purchase Plan.

77. Attached hereto as Exhibit 75 is a true and accurate copy of the 2004 Form 5500 for the DCC Money Purchase Plan.

78. Attached hereto as Exhibit 76 is a true and accurate copy of the 2005 Form 5500 for the DCC Money Purchase Plan.

79. Attached hereto as Exhibit 77 is a true and accurate copy of relevant portions of the deposition transcript of Anthony J. Casella, MD dated May 21, 2009.

80. Attached hereto as Exhibit 78 is a true and accurate copy of the Loan Amortization Schedule for Criscito's \$250,000 loan from the DCC Money Purchase Plan.

81. Attached hereto as Exhibit 79 is a true and accurate copy of Criscito's handwritten submissions to APC reflecting information regarding Criscito's \$250,000 loan.

82. Attached hereto as Exhibit 80 is a true and accurate copy of the Expert Report of Scott M. Feit dated April 14, 2010.

83. Attached hereto as Exhibit 81 is a true and accurate copy of the Answer, Separate Defenses, Counterclaim, Jury Demand and Certification Pursuant to L. Civ. R. 11.2 that was filed on February 17, 2009.

I declare under penalty of perjury that the foregoing is true and accurate. Executed on September 17, 2010.



MELISSA E. FLAX